

§ 208.22

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will issue a Form I-94, Arrival-Departure Record, which also reflects the derivative's current status as an asylee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I-765, Application for Employment Authorization, and a copy of the Form I-797. The approval of the Form I-730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I-730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his/her spouse or child(ren) by filing a separate Form I-730 for each qualifying family member with the designated Service office, setting forth the full name, relationship, date and place of birth, and current location of each such person. A recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes. A separate Form I-730 for each qualifying family member must be filed before February 28, 2000, or within 2 years of the date in which the asylee was granted asylum status, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. When the Form I-730 is approved, the Service will notify the asylee of such approval on Form I-797. The approved Form I-730 shall be forwarded by the Service to the Department of State for delivery to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located. The approval of the Form I-730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the

approved Form I-730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(e) *Denial.* If the spouse or child is found to be ineligible for the status accorded under section 208(c) of the Act, a written notice stating the basis for denial shall be forwarded to the principal alien. No appeal shall lie from this decision.

(f) *Burden of proof.* To establish the claimed relationship of spouse or child as defined in sections 101(a)(35) and 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in § 204.2 (a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

(g) *Duration.* The spouse or child qualifying under section 208(c) of the Act shall be granted asylum for an indefinite period unless the principal's status is revoked.

[62 FR 10337, Mar. 6, 1997, as amended at 63 FR 3796, Jan. 27, 1998. Redesignated at 64 FR 8490, Feb. 19, 1999 and further redesignated and amended at 65 FR 76136, Dec. 6, 2000]

§ 208.22 Effect on exclusion, deportation, and removal proceedings.

An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 208.24. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation, or deferral of removal, may not be deported or removed to the country to which his or her deportation or removal is ordered withheld or deferred unless the withholding order is terminated pursuant to § 208.24 or deferral is terminated pursuant to § 208.17(d) or (e).

[64 FR 8492, Feb. 19, 1999. Revised at 65 FR 76136, Dec. 6, 2000]

§ 208.23 Restoration of status.

An alien who was maintaining his or her nonimmigrant status at the time of